

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DENISE G. TIERNAN,

Plaintiff,

-against-

CONTROL BUILDING SERVICES, INC., SIMON  
PROPERTY GROUP, INC. and SIMON PROPERTY  
GROUP, L.P.,

Defendants.

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Civil Action No.:  
08-CV-1633 (SHS)(AJP)

ANSWER

Stein, J.  
Peck, M.J.

Defendants, CONTROL BUILDING SERVICES, INC., SIMON PROPERTY GROUP, INC. and SIMON PROPERTY GROUP, L.P., by their attorneys, SIMMONS, JANNACE & STAGG, L.L.P., as and for their Answer to the Complaint of plaintiff, respond as follows:

1. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "FIRST" of the Complaint.

2. Deny the allegations contained in numbered paragraph "SECOND" of the Complaint.

3. Deny the allegations contained in numbered paragraph "THIRD" of the Complaint.

4. Deny the allegations contained in numbered paragraph "FOURTH" of the Complaint.

5. Deny the allegations contained in numbered paragraph "FIFTH" of the Complaint.

6. Deny the allegations contained in numbered paragraph "SIXTH" of the Complaint.

7. Deny the allegations contained in numbered paragraph "SEVENTH" of the Complaint.

8. Deny the allegations contained in numbered paragraph "EIGHTH" of the Complaint.

9. Deny the allegations contained in numbered paragraph "NINTH" of the Complaint.

10. Deny the allegations contained in numbered paragraph "TENTH" of the Complaint.

11. Deny the allegations contained in numbered paragraph "ELEVENTH" of the Complaint.

12. Deny the allegations contained in numbered paragraph "TWELFTH" of the Complaint.

13. Deny the allegations contained in numbered paragraph "THIRTEENTH" of the Complaint.

14. Deny the allegations contained in numbered paragraph "FOURTEENTH" of the Complaint.

15. Deny the allegations contained in numbered paragraph "FIFTEENTH" of the Complaint.

16. Deny the allegations contained in numbered paragraph "SIXTEENTH" of the Complaint.

17. Deny the allegations contained in numbered paragraph "SEVENTEENTH" of the Complaint.

18. Deny plaintiff is entitled to the relief requested in the "WHEREFORE Clause."

19. Defendants demand that liability, if any, be apportioned.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

20. Plaintiff's Complaint fails to state a cause of action.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

21. Upon information and belief, the injuries allegedly sustained by plaintiff were not as a result of any culpable conduct by the defendants herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the culpable conduct of plaintiff, which contributed to or caused plaintiff's alleged injuries.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

22. Upon information and belief, this Court lacks jurisdiction over the subject matter of this action.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

23. The answering defendants herein state that there exists a defense to the causes of action asserted in the Complaint in that plaintiff's Complaint is founded upon documentary evidence.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

24. Upon information and belief, any damages sustained by plaintiff were caused, in whole or in part, by the culpable

conduct of plaintiff and/or were aggravated by the culpable conduct of plaintiff.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

25. If plaintiff proves at trial the existence of a dangerous condition, all of which is denied, upon information and belief, any damages sustained by plaintiff were caused by plaintiff's having voluntarily and unreasonably assumed a known and dangerous risk, and/or the damages were caused by or aggravated by such conduct.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

26. The defendants will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

27. Upon information and belief, defendants never received actual or constructive notice of any defective or dangerous condition, and therefore, they cannot be liable for any alleged injuries suffered by plaintiff.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

28. Upon information and belief, if plaintiff suffered any damages as alleged in the Complaint, such damages were as a result of an independent superseding act by a third party for which defendants cannot be held liable, and defendants' conduct was in no way the proximate cause of such damages.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

29. If plaintiff suffered damages as alleged, then plaintiff failed to mitigate such damages.

**WHEREFORE,** for all of the foregoing reasons, it is respectfully requested that plaintiff's Complaint be dismissed in its entirety, and that this defendants be awarded the costs and disbursements of this action, reasonable attorney's fees, and such other and further relief as this Court may deem just and proper.

Dated: Syosset, New York  
February 21, 2008

Yours, etc.,

SIMMONS, JANNACE & STAGG, L.L.P.

By/s/ Michael D. Kern

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MICHAEL D. KERN (mk 9573)

Attorneys for Defendants  
CONTROL BUILDING SERVICES, INC.,  
SIMON PROPERTY GROUP, INC. and  
SIMON PROPERTY GROUP, L.P.

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TO: ALPERT & KAUFMAN, LLP  
Attorneys for Plaintiff  
DENISE G. TIERNAN  
**Office & P.O. Address:**  
The Woolworth Building  
233 Broadway - Suite 707  
New York, New York 10279  
(212) 349-2000

VERIFICATION

**Re: DENISE G. TIERNAN v. CONTROL BUILDING SERVICES, INC.,  
SIMON PROPERTY GROUP, INC. and SIMON PROPERTY GROUP, L.P.  
CIVIL ACTION NO.: 08 CIV. 1633 (SHS) (AJP)**

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I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York state that I am the attorney of record for defendants, CONTROL BUILDING SERVICES, INC., SIMON PROPERTY GROUP, INC. and SIMON PROPERTY GROUP, L.P. ("defendants"), in the within action. I have read the foregoing Verified Answer to plaintiff's Complaint and know the contents thereof. The same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true. The reason this verification is made by me and not by defendants is because defendants have their principal places of business in another county.

The grounds for my belief as to all matters not stated upon my own knowledge are as follows: documents in my file and conversations with defendants' representatives.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Syosset, New York  
February 21, 2008

/s/ Michael D. Kern  
MICHAEL D. KERN

Answer